



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 6685-99

1 May 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Naval Reserve on 11 May 1943 at the age of 20. Your record reflects that you served for a year and four months without incident but on 5 September 1944 you were convicted by deck court (DC) of disobedience and sentenced to reduction in rate.

Your record further reflects that on 23 October 1944, after undergoing a neuro-psychiatric examination, you stated that you had participated in about six homosexual acts by permitting a man to perform fellatio on you. Shortly thereafter, on 4 November 1944, you submitted a written statement requesting, in part, that you be separated from the Naval Service due to your participation in homosexual acts. Your statement noted, in part, as follows:

....During the 16 months I have been at Farragut I have found this period of time very difficult.I have found it very difficult to maintain a natural life. Lately I have become very nervous, despondent, and considerably disturbed physically.I came in contact with a man who performed several acts of homosexuality on me. I feel now it will be

very difficult for me to remain in the service and feel that the only way I can be certain of saving myself is to again return to civilian life where I can be among my people and lead a normal life. I have not committed any acts of homosexuality with any person in the Navy but feel that my physical make-up is such now that I will not be able to do a good job for the Navy and be fair to myself. Prior to my entry into the service I had not committed any type of unnatural sex act and feel that I am a victim of circumstances and surroundings. I therefore feel that it would be better for all concerned that I be released from Naval Service.

On 7 November 1944 your commanding officer recommended that your request for separation be granted based on your admittance of participation in homosexual acts. On 16 November 1944 the discharge authority approved the foregoing recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of unfitness due to homosexual acts. On 5 December 1944 you were so discharged.

Your record further reflects that on 5 March 1945 your request for recharacterization of your service to the Board for Review of Discharges and Dismissals (BRDD) was denied because you provided testimony that the statement you submitted regarding your participation in homosexual acts was false and you never participated in such acts.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you would like your discharge upgraded. The Board also considered the statement from the American Legion in support of your case. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your submission of false information in order to procure a discharge from the Naval Service during time of war. Given all the circumstances of your case, the Board concluded the your undesirable discharge was proper and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director